



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF MAY 21, 2012

The regular meeting of the Sussex County Board of Adjustment was held Monday, May 21, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with Everett Moore – County Attorney, and staff members Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of May 7, 2012 as circulated. Motion carried 5 – 0.

Mr. Moore read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 10972 – Jaime Hooks – north of Road 494 (Airport Road) approximately 593 feet east of Road 497 (Old Hickory Road). (Tax Map I.D. 4-32-7.00-28.05)

A special use exception to operate a day care facility.

Mrs. Isaacs presented the case. Jaime Hooks was sworn in and testified requesting a special use exception to operate a day care facility; that she currently runs a home day care on the property; that she has been in business for 4-years; that the hours of operation are 6:00 a.m. to 8:30 p.m., Monday through Friday; that the ages of the children are from 8-weeks old to 13-years old; that she will care for approximately 14-children and 2 of her own children; that she will hire 1-employee to help care for the children; that there is adequate parking; that the dwelling is approximately 2,000-square-foot; and that there is no adverse effect to the neighbor's.

Jill Krammer was sworn in and testified in support of the application and stated that she is the Applicant's mother; and that she owns the adjacent properties.

The Board found that no parties appeared in opposition to the application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 10972 for the requested Special Use Exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

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Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 10973 – Matthew D. & Cherie L. Williams – west of Road 82 (Hickory Hill Road) northeast corner of Summer Road and Fall Road, being Lot 3 within John C. Hudson Subdivision #2 development. (Tax Map I.D. 2-33-9.00-57.00)

A variance from the rear yard and side yard setback requirements.

Mrs. Isaacs presented the case. Matthew and Cherie Williams were sworn in and testified requesting a 10.6-foot variance from the required 20-foot rear yard setback requirement and a 6.9-foot variance from the required 15-foot side yard setback requirement for an existing detached garage; that the detached garage was built in 2000; that in 2002 he applied for a building permit for a family room addition and since there was not Certificate of Compliance issued on the detached garage he was denied a building permit; that he completed the electrical and plumbing inspections on the garage and was then given a building permit; that he was unaware at that time that the detached garage did not comply with the setback requirements; that he has applied for another building permit and received a letter from Planning & Zoning which stated that a Certificate of Compliance had never been issued for the detached garage and that the detached garage did not meet the required setback requirements; that the septic drainfield prevents the garage from being built or moved into compliance; that they were not permitted to have two entrances on the property; that they relied on their builder to construct the detached garage; that the property cannot be otherwise developed; that the variance will enable reasonable use of the property; and that they submitted letters of support from their neighbor's.

Jim Hitchens was sworn in and testified in support of the application, and stated that he owns the adjacent property and has no objection to the application.

Rick Stone was sworn in and testified in support of the application, and stated that he is also an adjacent neighbor and has no objection to the application.

Mrs. Isaacs stated that the Applicant submitted 3-letters in support of the application.

The Board found that 2-parties appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

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Mr. Moore also stated for the record that Mrs. Williams indicated that when she obtained the building permit the setback requirements were not explained to her.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 10973 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is unique due to the existing septic drainfield;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted will not alter the character of the neighborhood; and
5. The variance is the minimum variance to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 10974 – Connie Lyons – west of Route 13A (Bridgeville Highway) south of Garden Lane, being Lot 88 within Green Acres development. (Tax Map I.D. 3-31-3.00-262.00)

A variance from the rear yard and side yard setback requirements.

Mrs. Isaacs presented the case. Connie Lyons, Laura Webster, Debbie Lyons and Mark Morgan were sworn in and testified requesting a 6.1-foot variance from the required 10-foot side yard setback requirement for an existing screen porch, a 4.6-foot variance from the required 5-foot rear yard setback requirement for an existing shed, and a 6.4-foot variance from the required 10-foot side yard setback requirement for an existing deck; that the decks and shed existed when she purchased the property; that she enclosed the existing deck with screen; that they felt if they did not extend further than the existing deck there would be no issue with the required setbacks; that he has been a builder in the area for 12-years; that they submitted a petition of support from neighbors; that the screen porch does not alter the character of the neighborhood; that all other

structures have received a Certificate of Compliance; and that the porch gives extra space for the family when visiting.

The Board found that 2- parties appeared in support of the application.

Mrs. Isaacs stated that the Applicant submitted a petition with 20-signatures in support.

The Board found that no parties appeared in opposition to the application.

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Mrs. Isaacs read into the record 1-letter of opposition to the application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **left open to allow the Applicant time to prepare their case.** Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 10975 - Kerry S. Wertz – southwest of Route 54 (Lighthouse Road) south of Wilson Avenue, being Lot 19 within Cape Windsor development. (Tax Map I.D. 5-33-20.18-143.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Margaret and Kerry Wertz were sworn in and testified requesting a 5.8-foot variance from the required 10-foot side yard setback requirement for a screen porch and a 2.1-foot variance from the required 10-foot side yard setback requirement for a second floor deck; that the dwelling was built in 2003; that the Board approved variances for the lot in 2001; that there have been numerous problems with the dwelling since; that they have had to repair the roof twice and replace cabinets and flooring inside the dwelling; that the water is constantly coming in around the windows; that the water damage has caused the boards to bow and created mold; that they have contacted a new builder and have been advised to tear down the decking and reface the dwelling in order to repair the damage; that the extension on the first floor is to add an additional bathroom; that her mother lives with them and needs access to the first floor; that the dwelling was built originally to not infringe on any neighbor's view; that the proposed structures will not alter the character of the neighborhood; and that they submitted letters of support from their neighbors.

The Board found that no parties appeared in support of or in opposition to the application.

Mrs. Isaacs stated that the Applicant submitted 8-letters in support of the application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 10975 for the requested variance based on the record made at the public hearing and for the following reasons;

1. The need to rebuild makes the property unique;
2. The variance is necessary to enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

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Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 10976 – Kelly & Mary Sheridan – east of road 413B (Cowhouse Branch Road) approximately 3,450 feet west of Route 26 (Millsboro Highway). (Tax Map I.D. 3-33-4.00-18.00)

A special use exception to retain a manufactured home for storage.

Mrs. Isaacs presented the case. Kelly and Mary Sheridan were sworn in and testified requesting a special use exception to retain a manufactured home for storage; that the unit they plan to keep for storage was originally their home; that the second manufactured home on the property was placed for his father with an approved Special Use Exception for a medical hardship basis; that his parents no longer live on the property; that they now live in the manufactured home that was his fathers; that they plan to use the unit for storage of his collectables; that the kitchen has been removed from the unit; that the use will not substantially or adversely affect the uses of the neighboring properties; that the neighbors are in support of the application; and that there will be no living quarters in the unit.

The Board found that no parties appeared in support of or in opposition to the application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 10976 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 10977 – Steven and Beverly Abdalla – east of Road 279 (Angola Beach Road) west of Herring Reach Court, being Lot 44 within Bay Pointe development. (Tax Map I.D. 2-34-18.00-658.00)

A variance from the rear yard setback requirement.

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Mrs. Isaacs presented the case. Beverly Abdalla and Pamela McDonald were sworn in and testified requesting a 6-foot variance from the required 10-foot rear yard setback requirement for a proposed screen porch and overhang on an existing deck; that she wants to construct a screen porch to ward off mosquitos; that to enclose only 5-foot of the porch in order to comply with the setback requirements is not practical nor would the community approve that size porch; that the rear yard is adjacent to a pond in the development; that there is no adverse effect to the neighborhood; that there are similar porches in the development; that the variance will enable reasonable use of the property; that it was not created by the Applicant; that it is the minimum variance to afford relief; and that the neighbors support the application.

The Board found that no parties appeared in support of or in opposition to the application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 10977 for the requested variance based on the record made at the public hearing and for the following reasons;

1. The property is unique since the dwelling covers the entire buildable area;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted will not alter the character of the neighborhood; and
5. The variance is the minimum variance to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 10978 – University of Delaware/Lindsay Hughes – west of Route 60 (Cypress Road) approximately 1,150 feet northwest of Route 378 (Blueberry Farm Road). (Tax Map I.D. 5-33-16.00-4.01)

A special use exception for a child care center.

Mrs. Isaacs presented the case. Lindsay Hughes and Evelyn Johnson were sworn in and testified requesting a special use exception for a child care center; that the center will be in an existing 2-bedroom unit; that the hours of operation will be from 3:00 p.m. to 6:00 p.m., Monday through Friday; that the use is for the older children that come to the current center; that the proposed center will be used for After School Care and Summer Programs; and that it will not substantially affect adversely the uses of adjacent properties.

The Board found that no parties appeared in support of or in opposition to the application.

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Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 10978 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 10979 – Alpha Farms, LLC – south of Road 88 (Cave Neck Road) approximately 1,088 feet west of Front Street (Tax Map I.D. 2-35-20.00-49.00)

A variance from the minimum lot width requirement, minimum square footage for a parcel, and front yard setback requirement.

Mrs. Isaacs presented the case. Shawna Thompson and Charles Adams were sworn in and testified requesting a 79.25-foot variance from the required 150-foot lot width requirement, a 1,766.40-square-foot variance from the required 20,000-square foot lot size requirement, and a 7.39-foot variance from the required 40-foot front yard setback requirement for an existing dwelling on Lot 1, a 79.25-foot variance from the required 150-foot lot width requirement, a 2,292.60-square foot variance from the required 20,000-square foot lot size requirement for Lot 2; that they plan to relocate an existing dwelling to the proposed lot; that the dwelling is set to be demolished if not moved; that the existing dwelling will remain on proposed Lot 1; that the lots will used a shared driveway; that the proposed dwelling will meet the required setback requirements; that the existing dwelling will be renovated; that without the variance the property cannot be otherwise developed; that there are similar sized lots in the area; and that they submitted pictures.

The Board found that no parties appeared in support of or in opposition to the application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 10979 for the requested variances based on the record made at the public hearing and for the following reasons;

1. The property cannot be otherwise developed;
2. The difficulty was not created by the Applicant;
3. The variance will not alter the character of the neighborhood;
4. The variance is necessary to enable reasonable use of the property; and
5. The variances sought is the minimum variance to afford relief.

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Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 1.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, and Mr. Callaway – yea, with Mr. Mills – nay.

Case No. 10980 – Dawn A. Schutt – north of Road 312 (River Road) west of Chief Road. (Tax Map I.D. 2-34-34.11-23.00)

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Dawn Schutt was sworn in and testified requesting a 32-foot variance from the required 40-foot front yard setback requirement for a proposed deck and enclosed porch; that she was approved for a variance on December 12, 2011; that at the time of that request they planned on using the existing porch and deck; that since that hearing she has been advised by her builder she must construct a new porch; that the builder stated it is not possible to use the existing porch due to the height of the new unit; that the property is a triangle shape making it unique; that the variance will enable reasonable use of the property; that the property cannot be otherwise developed; that the variance will not alter the character of the neighborhood; that it is the minimum variance to afford relief; and that she submitted a letter from her builder.

The Board found that 3-parties appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 10980 for the requested variance based on the record made at the public hearing and for the following reasons;

1. The property is a unique triangular shape;

2. The variance is necessary to enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted will not alter the character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be granted for the reasons stated. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

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Case No. 10981 – Bayville Shore Associates, LLC – northeast of Route 54 (Lighthouse Road) approximately 653 feet east of Route 58B (Bayville Road). (Tax Map I.D. 5-33-19.00-24.00)

A special use exception to retain a temporary manufactured home type structure for a sales office.

Mrs. Isaacs presented the case. Michael Cicada was sworn in and testified requesting a special use exception to retain a temporary manufactured home type structure for a sales office; that the unit has been on the property for a total of 7-years; that they want to extend the use for a 2-year period; that the project is 90% complete; that they feel the extension will serve enough time to complete the sales of the remaining lots in the development; and that the current road construction on Route 54 has had an adverse affect to the project.

The Board found that no parties appeared in support of or in opposition to the application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 10981 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting Adjourned 8:50 p.m.